

1 Department of Real Estate
2 320 West 4th Street, Ste. 350
3 Los Angeles, California 90013-1105

4 Telephone: (213) 576-6982 (office)

FILED

FEB 27 2009

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)	No. H-35229 LA
12)	
13)	
13 LINDA EVA COLE, doing business as)	<u>STIPULATION</u>
14 KLO Loan Company and Toy House)	<u>AND</u>
14 Real Estate,)	<u>AGREEMENT</u>
15)	
15 Respondent,)	

16 It is hereby stipulated by and between Respondent
17 LINDA EVA COLE (sometimes referred to as "Respondent"),
18 represented by Mary E. Work, Esq. and the Complainant, acting by
19 and through Elliott Mac Lennan, Counsel for the Department of
20 Real Estate, as follows for the purpose of settling and disposing
21 of the Accusation ("Accusation") filed on August 19, 2008, in
22 this matter:

23 1. All issues which were to be contested and all
24 evidence which was to be presented by Complainant and Respondent
25 at a formal hearing on the Accusation, which hearing was to be
26 held in accordance with the provisions of the Administrative
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1 Procedure Act ("APA"), shall instead and in place thereof be
2 submitted solely on the basis of the provisions of this
3 Stipulation and Agreement ("Stipulation").

4 2. Respondent has received, read and understands the
5 Statement to Respondent, the Discovery Provisions of the APA and
6 the Accusation filed by the Department of Real Estate in this
7 proceeding.

8 3. Respondent timely filed a Notice of Defense
9 pursuant to Section 11506 of the Government Code for the purpose
10 of requesting a hearing on the allegations in the Accusation.
11 Respondent hereby freely and voluntarily withdraws said Notice of
12 Defense. Respondent acknowledges that Respondent understands
13 that by withdrawing said Notice of Defense Respondent thereby
14 waives Respondent's right to require the Commissioner to prove
15 the allegations in the Accusation at a contested hearing held in
16 accordance with the provisions of the APA and that Respondent
17 will waive other rights afforded to Respondent in connection with
18 the hearing such as the right to present evidence in Respondent's
19 defense the right to cross-examine witnesses.
20

21 4. This Stipulation is based on the factual
22 allegations contained in the Accusation. In the interest of
23 expedience and economy, Respondent chooses not to contest these
24 allegations, but to remain silent and understands that, as a
25 result thereof, these factual allegations, without being admitted
26 or denied, will serve as a prima facie basis for the disciplinary
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1 action stipulated to herein. The Real Estate Commissioner shall
2 not be required to provide further evidence to prove said factual
3 allegations.

4 5. This Stipulation is made for the purpose of
5 reaching an agreed disposition of this proceeding and is
6 expressly limited to this proceeding and any other proceeding or
7 case in which the Department of Real Estate ("Department"), the
8 state or federal government, or any agency of this state, another
9 state or federal government is involved.

10 6. It is understood by the parties that the Real
11 Estate Commissioner may adopt this Stipulation as his Decision in
12 this matter thereby imposing the penalty and sanctions on
13 Respondent's real estate licenses and license rights as set forth
14 in the "Order" herein below. In the event that the Commissioner
15 in his discretion does not adopt the Stipulation, it shall be
16 void and of no effect and Respondent shall retain the right to a
17 hearing and proceeding on the Accusation under the provisions of
18 the APA and shall not be bound by any stipulation or waiver made
19 herein.
20

21 7. The Order or any subsequent Order of the Real
22 Estate Commissioner made pursuant to this Stipulation shall not
23 constitute an estoppel, merger or bar to any further
24 administrative or civil proceedings by the Department of Real
25 Estate with respect to any matters which were not specifically
26 alleged to be causes for Accusation in this proceeding but do
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1 constitute a bar, estoppel and merger as to any allegations
2 actually contained in the Accusations against Respondent herein.

3 8. Respondent understands that by agreeing to this
4 Stipulation, Respondent agrees to pay, pursuant to Business and
5 Professions Code Section 10148, the cost of the audit. The
6 amount of said cost for the audit is \$7,208.00.

7 9. Respondent has received, read, and understands the
8 "Notice Concerning Costs of Subsequent Audit". Respondent
9 further understands that by agreeing to this Stipulation, the
10 findings set forth below in the Determination of Issues become
11 final, and the Commissioner may charge Respondent for the cost of
12 any subsequent audit conducted pursuant to Business and
13 Professions Code Section 10148 to determine if the violations
14 have been corrected. The maximum cost of the subsequent audit
15 will not exceed \$7,208.00.
16

17 DETERMINATION OF ISSUES

18 By reason of the foregoing, it is stipulated and agreed
19 that the following determination of issues shall be made:

20 The conduct of LINDA EVA COLE as described in Paragraph
21 4, hereinabove, is in violation of Sections 10145 of the Business
22 and Professions Code ("Code") and Section 2832(d) of Title 10,
23 Chapter 6 of the California Code of Regulations and is a basis
24 for discipline of Respondent's license and license rights as
25 violations of the Real Estate Law pursuant to Code Sections
26 10177(d) and 10177(h).
27

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

I.

All licenses and licensing rights of Respondent
LINDA EVA COLE, under the Real Estate Law are suspended for a
period of sixty days from the effective date of this Decision;
provided, however, that if Respondent requests, said suspension,
or a portion thereof, shall be stayed upon condition that:

1. Pursuant to Section 10175.2 of the Business and
Professions Code, Respondent pays a monetary penalty of \$66.66
per day or Four Thousand Dollars (\$4,000) in total.

2. Said payment shall be in the form of a cashier's
check or certified check made payable to the Recovery Account of
the Real Estate Fund. Said check must be received by the
Department prior to the effective date of the Decision in this
matter.

3. No further cause for disciplinary action against
the real estate license of Respondent occurs within two (2) years
from the effective date of the Decision in this matter.

4. If Respondent fails to pay the monetary penalty in
accordance with the terms and conditions of the Decision, the
Commissioner may, without a hearing, order the immediate
execution of all or any part of the stayed suspension in which
event Respondent shall not be entitled to any repayment nor
credit, prorated or otherwise, for money paid to the Department
under the terms of this Decision.

1 5. If Respondent pays the monetary penalty and if no
2 further cause for disciplinary action against the real estate
3 license of Respondent occurs within two (2) years from the
4 effective date of the Decision, the stay hereby granted shall
5 become permanent.

6 II.

7 Pursuant to Section 10148 of the Business and
8 Professions Code, Respondent LINDA EVA COLE shall pay the
9 Commissioner's reasonable cost for (a) the underlying audit (b) a
10 subsequent audit to determine if LINDA EVA COLE, is now in
11 compliance with the Real Estate Law. The cost of the audit which
12 led to this disciplinary action is \$7,208.00. In calculating the
13 amount of the Commissioner's reasonable cost, the Commissioner
14 may use the estimated average hourly salary for all persons
15 performing audits of real estate brokers, and shall include an
16 allocation for travel time to and from the auditor's place of
17 work. Said amount for the prior and subsequent audits shall not
18 exceed \$14,416.00.

19 Respondent shall pay such cost within 60 days of
20 receiving an invoice from the Commissioner detailing the
21 activities performed during the audit and the amount of time
22 spent performing those activities.

23 The Commissioner may suspend the license of Respondent
24 pending a hearing held in accordance with Section 11500, et seq.,
25 of the Government Code, if payment is not timely made as provided
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1 for herein, or as provided for in a subsequent agreement between
2 the Respondent and the Commissioner. The suspension shall remain
3 in effect until payment is made in full or until Respondent
4 enters into an agreement satisfactory to the Commissioner to
5 provide for payment, or until a decision providing otherwise is
6 adopted following a hearing held pursuant to this condition.

7 III.

8 All licenses and licensing rights of Respondent LINDA
9 EVA COLE are indefinitely suspended unless or until Respondent
10 provides proof satisfactory to the Commissioner, of having taken
11 and successfully completed the continuing education course on
12 trust fund accounting and handling specified in paragraph (3) of
13 subdivision (a) of Section 10170.5 of the Business and
14 Professions Code. Proof of satisfaction of this requirement
15 includes evidence that respondent has successfully completed the
16 trust fund account and handling continuing education course
17 within 120 days prior to the effective date of the Decision in
18 this matter.

19 IV.

20 Respondent LINDA EVA COLE shall within six months from
21 the effective date of the decision, take and pass the
22 Professional Responsibility Examination administered by the
23 Department including the payment of the appropriate examination
24 fee. If Respondent fails to satisfy this condition, the
25 Commissioner may order suspension of Respondent's license until
26 Respondent passes the examination.

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3 DATED: 11-10-08

ELL
ELLIOTT MAC LENNAN, Counsel for
the Department of Real Estate

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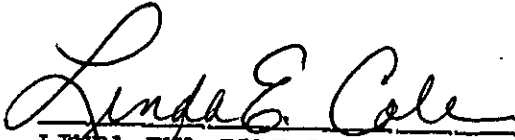
7 EXECUTION OF THE STIPULATION

8 I have read the Stipulation and discussed it with my
9 counsel. Its terms are understood by me and are agreeable and
10 acceptable to me. I understand that I am waiving rights given to
11 me by the California Administrative Procedure Act (including but
12 not limited to Sections 11506, 11508, 11509 and 11513 of the
13 Government Code), and I willingly, intelligently and voluntarily
14 waive those rights, including the right of requiring the
15 Commissioner to prove the allegations in the Accusation at a
16 hearing at which I would have the right to cross-examine
17 witnesses against me and to present evidence in defense and
18 mitigation of the charges.

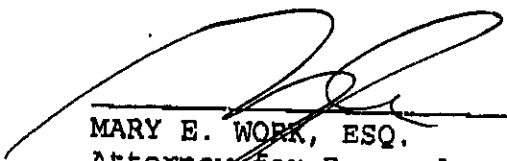
19
20 Respondent can signify acceptance and approval of the
21 terms and conditions of this Stipulation by faxing a copy of its
22 signature page, as actually signed by Respondent, to the
23 Department at the following telephone/fax number: Elliott Mac
24 Lennan at (213) 576-6917. Respondent agrees, acknowledges and
25 understands that by electronically sending to the Department a
26 fax copy of Respondent's actual signature as it appears on the
27

1 Stipulation, that receipt of the faxed copy by the Department
2 shall be as binding on Respondent as if the Department had
3 received the original signed Stipulation.

4
5 DATED: 11/20/08


LINDA EVA COLE Respondent

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8 DATED: 11/24/08


MARY E. WORK, ESQ.
Attorney for Respondent

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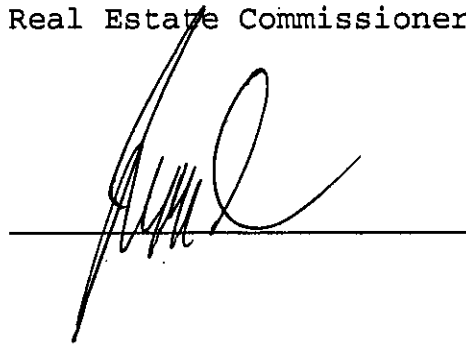
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* * *

The foregoing Stipulation and Agreement is hereby
adopted as my Decision as to Respondent LINDA EVA COLE and shall
become effective at 12 o'clock noon on March 30, 2009
2009.

IT IS SO ORDERED January 28, 2009.

JEFF DAVI
Real Estate Commissioner

A handwritten signature in black ink, appearing to read 'Jeff Davi', is written over a horizontal line.

ELLIOTT MAC LENNAN, SBN 66674
Department of Real Estate
320 West 4th Street, Ste. 350
Los Angeles, California 90013-1105

Telephone: (213) 576-6911 (direct)
-or- (213) 576-6982 (office)

FILED

AUG 19 2008

DEPARTMENT OF REAL ESTATE

BY: *[Signature]*

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

* * *

In the Matter of the Accusation of

No. H-35229 LA

LINDA EVA COLE, doing
business as KLO Loan Company
and Toy House Real Estate,

A C C U S A T I O N

Respondent.

The Complainant, Robin Trujillo, a Deputy Real Estate
Commissioner of the State of California, acting in her official
capacity, for cause of Accusation against LINDA EVA COLE dba KLO
Loan Company and Toy House Real Estate, is informed and alleges
as follows:

1.

All references to the "Code" are to the California
Business and Professions Code and all references to "Regulations"
are to Title 10, Chapter 6, California Code of Regulations.

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LICENSE HISTORY

2.

At all times mentioned, LINDA EVA COLE ("COLE"), was licensed or had license rights issued by the Department of Real Estate ("Department") as a real estate broker. On July 14, 2001, COLE was originally licensed as a real estate broker.

LICENSED ACTIVITIES AND BROKERAGE

3.

At all times mentioned, in the City of Long Beach, County of Los Angeles, COLE acted as real estate broker and conducted licensed activities within the meaning of:

A. Code Section 10131(a). COLE dba Toy House Real Estate, engaged in the business of, acted in the capacity of, advertised or assumed to act as a real estate broker, including the solicitation for listings of and the negotiation of the sale of residential real property as the agent of others.

B. Code Section 10131(d). COLE dba KLO Loan Company, engaged in activities with the public wherein lenders and borrowers were solicited for loans secured directly or collaterally by liens on real property, wherein such loans were arranged, negotiated, processed and consummated on behalf of others for compensation or in expectation of compensation and for fees often collected in advance; and

C. Conducted broker-controlled escrows through her in-house escrow, Toy House Real Properties Escrow Division, under

1 the exemption set forth in California Financial Code Section
2 17006(a)(4) for real estate brokers performing escrows incidental
3 to a real estate transaction where the broker is a party and
4 where the broker is performing acts for which a real estate
5 license is required.

6 AUDIT EXAMINATION

7 4.

8 On June 30, 2008, the Department completed an audit
9 examination of the books and records of COLE, pertaining to the
10 residential resale, mortgage and loan and broker-controlled
11 escrow activities described in Paragraph 3, that require a real
12 estate license. The audit examination covered a period of time
13 beginning on July 1, 2005 through March 7, 2008. The audit
14 examination revealed violations of the Code and the Regulations
15 as set forth below, and more fully discussed in Audit Report LA
16 070057, LA 070058 and LA 070309 and the exhibits and work papers
17 attached to said audit report.
18

19 5.

20 At all times mentioned, in connection with the
21 activities described in Paragraph 4, COLE accepted or received
22 funds in trust ("trust funds") from or on behalf of buyers,
23 sellers borrowers and escrow holders. Thereafter COLE made
24 disposition of such funds. From time to time herein mentioned
25 during the audit period, said trust funds were deposited and/or
26 maintained by COLE in the bank account as follows:
27

1 "Linda Cole dba Toy House Real Properties Escrow Division Trust
2 Account (VE3T)
3 Account No. 001783041"
4 Mellon 1st Business Bank
601 West Fifth St.
Los Angeles, CA 90071 (escrow trust account)

5 VIOLATIONS OF THE REAL ESTATE LAW

6 6.

7 With respect to the licensed activities referred to in
8 Paragraphs 3 and 5, and the audit examination including the
9 exhibits and work papers referred to in Paragraph 4, it is
10 alleged that COLE:

11 (a)(1) Tony Wong Sales Transaction. COLE acted as the
12 listing and selling agent for Tony Wong's ("Wong") purchase of
13 the real property located at 12896 Quail Summit, Apple Valley,
14 from Aliseo/Avelina Nuestro. The Transaction closed without Wong
15 having signed the purchases agreement. Additionally, COLE's
16 initials were inserted in the place for the buyer's initials.
17 This conduct is in violation of Code Sections 10176(a) and/or
18 10177(g).
19

20 (a)(2) Tony Wong Loan Transaction. Wong obtained a
21 loan through COLE for the 12896 Quail Summit, Apple Valley
22 property. The loan application recited that COLE was the
23 interviewer for Wong who signed it on September 20, 2005.
24 Initially the loan application recited that Otha Cole, COLE'S
25 deceased husband, on information and belief. Subsequently, Otha
26 Cole's name was crossed out and replaced with COLE's name as
27

1 interviewer. Additionally, Wong was not listed in the loan
2 appraisal for the said property as borrower, whereas someone
3 named Tezina was so listed. This conduct is in violation of Code
4 Sections 10176(a) and/or 10177(g).

5 (b) Failed to place Tony Wong's earnest money deposit
6 into a neutral escrow depository or into a trust fund account in
7 the name of the trustee at a bank or other financial institution
8 not later than three business days following receipt of the funds
9 by the broker or by the broker's salesperson, as required by Code
10 Section 10145 and Regulation 2832(d).

11 (c) Failed to place appraisal and credit report fees
12 collected from borrowers Wong, Najera and Barge, into a trust
13 account in the name of the broker as trustee at a bank or other
14 financial institution, in violation of Code Section 10145 of the
15 Code and Regulation 2832(a). Credit report and appraisal fees
16 were deposited into COLE's general account, in violation of Code
17 Section 10176(e).

18 (d) Permitted and/or caused the disbursement of trust
19 funds to credit report companies on the representation that these
20 amounts were needed to pay for credit report fees, which payments
21 exceeded the actual costs of these services. COLE did not
22 disclose these "mark-ups" to borrowers Wong and Najera, the
23 beneficiaries of said trust funds and did not obtain their
24 consent to these "mark-ups". COLE retained the difference
25 between the amounts paid and the actual costs of the services, in
26
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violation of Code Sections 10176(a) and/or 10176(g).

(e) Converted trust funds from credit report fees totaling \$92.01, by reducing the balance in general account #04769-11355 to an amount less than the trust funds deposited, in violation of Code Section 10145, 10176(i) and/or 10177(g). On June 13, 2008, COLE repaid the overcharged balance to the affected borrowers.

(f)(1) Failed to maintain a control record in the form of a columnar record maintained in chronological order of all "Trust Funds Received, Not Placed Broker's Trust Account", to wit, credit report and appraisal fees, in violation of Code Section 10145 and Regulations 2831, 2950(d) and 2951; and

(f)(2) Failed to maintain an accurate and complete columnar control record in chronological order, in violation of Code Section 10145 and Regulation 2831, 2950(d) and 2951.

(g)(1) Failed to maintain a separate record for each beneficiary or transaction, thereby failing to account for all trust funds received, including credit report fees and appraisal fees, as required by Code Section 10145 and Regulations 2831.1, 2950(d) and 2951; and

(g)(2) Failed to maintain an accurate and complete separate record, in violation of Code Section 10145 and Regulation 2831.1, 2950(d) and 2951.

(h) Permitted Cora Campbell, an unlicensed and unbonded person, to be an authorized signatory on the escrow trust

1 account, in violation of Code Section 10145 and Regulations 2834,
2 2950(d) and 2951.

3 (i)(1) Failed to retain a true and correct copy of a
4 Department of Real Estate approved Mortgage Loan Disclosure
5 Statement signed by the broker for borrowers Haddick, Hunter
6 Barge, Galangue and Brice, in violation of Code Section 10240 and
7 Regulation 2840, and;

8 (i)(2) Failed to disclose yield spread premiums from
9 lenders on the approved Mortgage Loan Disclosure Statement for
10 the aforesaid borrowers excluding Haddick in collective amount of
11 \$18,396.80, in violation of Code Section 10240 and Regulation
12 2840.

13 (j) Failed to exercise adequate supervision over her
14 activities requiring a real estate license to ensure compliance
15 the Real Estate Laws and Regulations and had no system in place
16 for regularly monitoring her compliance with the Real Estate Law
17 especially in regard to establishing policies to review trust
18 fund handling and unlicensed activity, in violation of Code
19 Sections 10159.2, 10177(h) and Regulation 2725.
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DISCIPLINARY STATUTES AND REGULATIONS

7.

The conduct of Respondent COLE, described in Paragraph 6, violated the Code and the Regulations as set forth:

<u>PARAGRAPH</u>	<u>PROVISIONS VIOLATED</u>
6(a)	Code Sections 10176(a) and/or 10177(g)
6(b)	Code Section 10145 and Regulation 2832(d)
6(c)	Code Sections 10145 and 10176(e) and Regulation 2832(a)
6(d)	Code Sections 10176(a) and 10177(g)
6(e)	Code Sections 10145 and 10176(i) and/or 10177(g)
6(f)	Code Section 10145 and Regulations 2831, 2950(d) and 2951

1 6(g) Code Section 10145 and Regulations
2 2831.1, 2950(d) and 2951
3
4
5 6(h) Code Section 10145 and Regulations 2834,
6 2950(d) and 2951
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8
9 6(i) Code Section 10240 and Regulation 2840
10
11
12 6(j) Code Sections 10159.2 and 10177(h) and
13 Regulation 2725

14 Each of the foregoing violations constitute cause for the
15 suspension or revocation of the real estate license and license
16 rights of COLE under the provisions of Code Sections 10176(a),
17 10176(e), 10176(g), 10176(i), 10177(d) and/or 10177(g) and
18 10177(h).
19

20 NEGLIGENCE

21 8.

22 The overall conduct of COLE constitutes negligence or
23 incompetence and is cause for discipline of the real estate
24 license and license rights of COLE pursuant to Code Section
25 10177(g).

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LACK OF SUPERVISION AND COMPLIANCE

9.

The overall conduct of COLE constitutes a failure to exercise supervision and control over the licensed activities of her brokerage. Nor did COLE maintain a system in place for regularly monitoring her compliance with the Real Estate Law especially in regard to establishing policies to review trust fund handling and record keeping for her client's trust funds or for supervising salesperson and loan agents, in violation of Code Sections 10177(d), 10177(h) and/or 10177(g).

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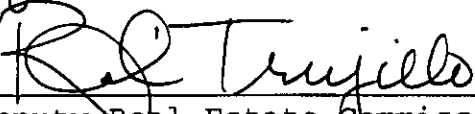
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1 WHEREFORE, Complainant prays that a hearing be
2 conducted on the allegations of this Accusation and that upon
3 proof thereof, a decision be rendered imposing disciplinary
4 action against the license and license rights of Respondent LINDA
5 EVA COLE, under the Real Estate Law (Part 1 of Division 4 of the
6 Business and Professions Code) and for such other and further
7 relief as may be proper under other applicable provisions of law.

8 Dated at Los Angeles, California

9 this 4 day of August 2008.

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11 _____
12 Deputy Real Estate Commissioner

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25 cc: Linda Eva Cole
26 Robin Trujillo
27 Sacto
Audits - Lisa Kwong